
COMMONWEALTH of VIRGINIA

Virginia Stormwater Management Law

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Department of Conservation & Recreation

CONSERVING VIRGINIA'S NATURAL AND RECREATIONAL RESOURCES

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STORMWATER MANAGEMENT LAW

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The following is the complete, edited text of Title 10.1, Chapter 6, Article 1.1 of the Code of Virginia as amended through 2000. Please refer to the Code of Virginia for an official copy of the Law.

§ 10.1-603.1. Cooperative state-local program.

The General Assembly has determined that the lands and waters of the Commonwealth are great natural resources; that as a result of intensive land development and other land use conversions, degradation of these resources frequently occurs in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent localized flooding; that these impacts adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters; that existing authorities under the Code of Virginia do not adequately address all of these impacts. Therefore the General Assembly finds it in the public interest to enable the establishment of stormwater management programs.

§ 10.1-603.2. Definitions.

As used in this article, unless the context requires a different meaning:

"Applicant" means any person submitting a stormwater management plan for approval.

"Board" means the Board of Conservation and Recreation.

"Department" means the Department of Conservation and Recreation.

"Flooding" means a volume of water which is too great to be confined within the banks or walls of the stream, water body or conveyance system and which overflows onto adjacent lands, causing or threatening damage.

"Land development" or *"land development project"* means a manmade change to the land surface that potentially changes its runoff characteristics.

"Linear development project" means a land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or *"local program"* means a statement of the various methods employed by a locality to manage the runoff from land development projects and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

"Nonpoint source pollution" means pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

"Runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Stormwater management plan" or *"plan"* means a document containing material for describing how existing runoff characteristics will be maintained by a land development project.

"Subdivision" means the same as defined in §15.1-465.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

§ 10.1-603.3. Counties, cities and towns may by ordinance establish stormwater management programs as a local option; effective date

Each locality may, by ordinance, to be effective on or after July 1, 1990, establish a local stormwater management program which shall include, but is not limited to, the following:

1. Consistency with regulations promulgated in accordance with provisions of this article;
2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
3. Provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

§ 10.1-603.4. Development of regulations.

The Board is authorized to promulgate regulations which specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. In order to inhibit the deterioration of existing waters and waterways, the regulations shall:

1. Require that state and local programs maintain after-development runoff rate of flow, as nearly as practicable, as the pre-development runoff characteristics;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations promulgated pursuant to the Virginia Erosion and Sediment Control Law, Article 4 (§10.1-560 et seq.) of Chapter 5 of this title, as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government which has adopted a stormwater management program must grant written approval of a plan, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved plan may be changed and requirements for inspection of approved projects.

§ 10.1-603.5. State agency projects.

A. After January 1, 1991, a state agency may not undertake any land clearing, soil movement, or construction activity involving soil movement or land development unless the agency has submitted and obtained approval of a stormwater management plan from the Department. In lieu of such a plan, the agency may annually submit stormwater management standards and specifications.

B. Notwithstanding the provisions of this article, all state agencies shall comply with the stormwater management provisions of the Erosion and Sediment Control Law, Article 4 (§10.1-560 et seq.) of Chapter 5 of this title, and related regulations. The Department shall perform random site inspections to assure compliance with this article, the Erosion and Sediment Control Law and regulations promulgated thereunder.

C. The Department shall have thirty days in which to comment on the stormwater management plan, and its recommendations shall be binding on the state agency or the private business hired by the state agency. Individual approval of separate projects is not necessary when annually approved standards and specifications have been approved.

As on-site changes occur, the state agency shall submit changes in the stormwater management plan to the Department.

The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

§ 10.1-603.6. Involvement of the Department with local programs.

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this article.

B. The Department is authorized to review the plan for any project with real or potential interjurisdictional impacts upon the request of one of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within ninety days of such request.

§ 10.1-603.7. Authorization for more stringent regulations.

Localities are authorized to adopt more stringent stormwater management regulations than those necessary to ensure compliance with the Board's minimum regulations, with the exception of regulations related to plan approval, provided that the more stringent regulations are based upon the findings of local comprehensive watershed management studies and that prior to adopting more stringent regulations a public hearing is held after giving due notice.

§ 10.1-603.8. Regulated activities; submission and approval of a control plan; security for performance; exemptions.

A. Except as provided in §10.1-603.5, after the adoption of a local ordinance, a person shall not develop any land for residential, commercial, industrial, or institutional use in that locality until he has submitted a stormwater management plan to the locality that has jurisdiction and has obtained approval of the plan from that locality. The plan may include appropriate maps, mathematical calculations, detail drawings and a listing of all major decisions to assure that the entire unit or units of land will be so treated to achieve the objectives of the local program. Prior to issuance of any permit, the locality may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the locality, to ensure that measures could be taken by the locality at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the approved stormwater management plan as a result of his land-development project. If the locality takes such action upon such failure by the applicant, the agency may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the completion of the requirements of the approved stormwater management plan, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such plans and are not intended to otherwise affect the requirements for such plans.

B. Notwithstanding any other provisions of this article, the following activities are exempt:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;
2. Tilling, planting or harvesting of agricultural, horticultural, or forest crops;
3. Single-family residences separately built and not part of a subdivision, including additions or modifications to existing single-family detached residential structures;
4. Land development projects that disturb less than one acre of land area; however, the governing body of a locality which has adopted a stormwater management program may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; and
5. Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point.

§ 10.1-603.9. Approved plan required for issuance of grading, building, or other permits.

Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a property unless a stormwater management plan has been approved that is consistent with the local program and this article and unless the applicant has certified that all land clearing, construction, land development and drainage will be done according to the approved plan.

§ 10.1-603.10. Recovery of administrative costs.

Any locality which administers a stormwater management program may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with plan review, issuance of permits, periodic inspection for compliance with approved plans, and necessary enforcement, provided that charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed an amount commensurate with the services rendered and expenses incurred or \$1,000, whichever is less.

§ 10.1-603.11. Monitoring, reports and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the installation of stormwater management measures and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure

compliance with the approved plan and to determine whether the measures required in the plan provide effective stormwater management. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the development activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by §10.1-603.14.

B. Notwithstanding subsection A of this section, the following may be applied:

1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance.
2. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this section.

§ 10.1-603.12. Department to review local and state agency programs.

A. The Department shall periodically conduct a comprehensive review and evaluation of the effectiveness of each local government's and state agency's stormwater management program. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding. A summary of these reviews and evaluations shall be submitted annually to the General Assembly.

B. If, after such a review and evaluation, a local government is found to have a program which does not comply with the provisions of this article or regulations promulgated thereunder, the Department may issue an order requiring that necessary corrective action be taken within a reasonably prescribed time.

§ 10.1-603.13. Appeals of decisions of counties, cities or towns.

A. An appeal from a decision of a locality concerning an application for approval or disapproval of a stormwater management plan may be taken by the applicant, or any aggrieved party authorized by law, within thirty days after the rendering of such a decision of the locality, to the circuit court of the jurisdiction in which the land development project is located.

B. Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the Administrative Process Act (§9-6.14:1 et seq.).

§ 10.1-603.14. Penalties, injunctions and other legal actions.

Any person who violates any provision of a local ordinance or program adopted pursuant to the authority of this article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding \$1,000 or up to thirty days imprisonment for each violation or both. Such a local ordinance may also include the following sanctions:

1. A locality operating its own program may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.
2. Without limiting the remedies which may be obtained in this section, a locality operating its own program may bring a civil action against any person for violation of any ordinance or any condition of a permit, or any provision of a local program adopted pursuant to this article. The action may seek the imposition of a civil penalty of not more than \$2,000 against the person for each violation.
3. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance or any condition of a permit or any provision of a local program adopted pursuant to this article, the administrator of the local program may provide, in an order issued by the administrator against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subdivision 2 of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subdivision 2.

§ 10.1-603.15. Cooperation with federal and state agencies.

Localities operating their own programs and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with plans for stormwater management.